COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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October 7, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Hand-Delivered

DOCKET FILE COPY ORIGINAL

Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; CC Docket No. 96-98

Dear Secretary Caton:

Enclosed please find an original and nine (9) copies of the Petition for Reconsideration of the Pennsylvania Public Utility Commission in the above-captioned matter.

Sincerely

M. Scott

Maureen A. Scott
Assistant Counsel

MAS/ms
Enclosure

cc: All parties of record

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions in the	)	
Telecommunications Act of 1996	)	

PETITION FOR RECONSIDERATION
OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

1. Introduction.

On August 8, 1996, the Federal Communications Commission ("FCC") issued its Second Report and Order implementing the provisions of § 251 of the Telecommunications Act of 1996 ("1996 Act" or "Federal Act"). The Second Report and Order addressed the issues of dialing parity; numbering administration; nondiscriminatory access to operator services, directory listings, directory assistance and other ILEC databases; and network disclosure requirements. Notice and a summary of the FCC's Second Report and Order were published in the Federal Register on September 6, 1996.

The Pennsylvania Public Utility Commission ("PaPUC") petitions the FCC for reconsideration of several non-jurisdictional issues raised in connection with the use of all-service overlays by state commissions in the future. It is the PaPUC's understanding that several parties, including state commissions, have appealed the Second Report and Order on jurisdictional grounds. So as not to interfere with the expeditious resolution of the jurisdictional issues raised on appeal, the PaPUC will confine its petition to several non-jurisdictional issues which have arisen given a conflict between the FCC's Second Report and Order and a recent order adopted by the PaPUC addressing a number shortage in Pittsburgh and the surrounding areas.

II. Discussion.

A. The Commission Should Not Mandate 10-Digit Dialing Throughout the Local Calling Areas In Conjunction With the Use of All-Service Overlays.

Section 251(e)(1) confers upon the FCC "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States," but states that "[n]othing in this paragraph shall preclude the Commission from delegating to state commissions or other entities all or any portion of such jurisdiction." Prior to the Federal Act's enactment, State commissions had usually resolved area code issues using the guidelines established in the Ameritech Order.

In response to the Federal Act, the FCC authorized the states to resolve matters involving the implementation of new area codes. The FCC recognized that State commissions are uniquely positioned to understand local conditions and what effect new area codes will have on those conditions. At the same time the FCC recognized that some states had implemented new area codes prior to its release of the order and therefore ratified their actions insofar as they are consistent with the FCC guidelines established in its Second Report and Order.

PaPUC supports the FCC's conclusion not to prohibit or severely restrict the states' right to choose overlay plans. Nonetheless, this may be the unintended impact of two additional requirements imposed upon overlay usage by the FCC in its Second Report and Order. The additional conditions on all-service overlays imposed by the FCC were:

(1) mandatory 10-digit local dialing by all customers between and within area

codes in the area covered by the new code; and

(2) availability to every existing telecommunications carrier, including CMRS providers, authorized to provide telephone exchange service, exchange access, or paging service in the affected area code 90 days before the introduction of a new overlay area code, of at least one NXX in the existing area code, to be assigned during the 90-day period preceding the introduction of the overlay.

Second Report and Order at para. 286.

On June 20, 1996, the PaPUC adopted an Order addressing the problem of a telephone number shortage in the 412 area code, which is Pittsburgh and the surrounding metropolitan area.[1] In that petition, the NPA Relief Coordinator stated it is estimated that the available supply of telephone numbers in the 412 area code will be exhausted by June 30, 1997. The letter-petition requested action by the PaPuC by July 1, 1996 to ensure a smooth transition to whatever form of relief is determined appropriate.

The PaPUC, upon careful consideration of the various comments received and the positions of the various parties, ordered implementation of an all-services overlay consistent with the guidelines set out by the FCC in the Ameritech Order.[2] However, the PaPUC ordered that "[a]ll LECs shall continue the use of seven-digit dialing within each area code to the extent

[1]See Petition of NPA Relief Coordinator Re: 412 Area Code Relief Plan, Docket No. P-000961027 (Order adopted June 20, 1996)("412 Area Code Order").

[2]The FCC established the following guidelines in the Ameritech Order that numbering administration should: (1) seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) not unduly favor or disadvantage any particular industry segment or group of consumers; and (3) not unduly favor one technology over another.

technically feasible and for as long as it remains feasible." Ordering paragraph 2 of the PaPUC's Order went on to provide that "[t]en-digit dialing may become permissive with institution of the overlay code, but should not become mandatory until necessary." 412 Area Code Order at p. 16.

The FCC should reconsider the additional condition imposed on overlay usage by its Second Report and Order that mandatory ten-digit dialing be implemented within and between area codes. As the FCC notes in recent Number Portability Order, use of the LRN or preferred method of achieving long-term number portability, will not require mandatory ten-digit dialing by all customers. Rather, when using LRN to implement service provider portability according to the Number Portability Order, customers will be able to continue to dial 7-digits.
The FCC should, therefore, not impose new dialing patterns on customers where not necessary. necessary. Imposition of ten-digit dialing upon customers when not necessary will lead to customer aggravation and inconvenience.

The FCC suggests that in its Second Report and Order that continuing to permit 7-digit dialing in such cases would be anti-competitive in that "[c]ustomers would find it less attractive to switch carriers because competing exchange service providers, most of which will be new entrants to the market, would have to assign their customers numbers in the new overlay area code, which would require those customers to dial 10-digits much more often than the incumbent's customers..." Second Report and Order at para. 287.

PaPUC suggests that with the availability of both interim number portability at the present time and the implementation of long-term number portability in 1997, any anti-competitive effects associated with the retention of 7-digit dialing will be offset. Number portability should eliminate or mitigate any anti-competitive effects which may otherwise have been present with with the continuation of 7-digit dialing. With number portability, the FCC's assumption that customers would find it less attractive to switch carriers because competing exchange service providers would have to assign their customers numbers in the new overlay area code, would no longer be true. ILEC customers could switch to the CLEC and still retain their existing 7-digit number. Additionally, all new customers, whether they are customers of the ILEC or the CLEC, would be required to dial 10-digits for calls. Therefore, there does not appear to be any anti-competitive impact upon the CLEC or the CLEC's customers if the FCC continued to permit 7-digit dialing in overly situations.

If the FCC continues to believe that maintenance of 7-digit dialing will have anti-competitive consequences, it should consider making an exception to the mandatory 10-digit dialing requirement when long-term number portability becomes available.

B. The Commission Should Not Mandate One NXX Code Per Provider In the Existing Area Code.

The Second Report and Order also requires that any all-services overlay plans make available to "every existing telecommunications carrier, including CMRS providers, authorized to provide telephoen exchange service, exchange access, or paging service in the affected area code 90 days before the introduction of a new overlay area code, of at least one NXX in the existing area code,. to be assigned during the 90-day period preceding the introduction of the overlay." Id. at para. 286. PaPUC's 412 Area Code Order provides for NXX rationing, which would now appear to be impermissible under the FCC's Second Report and Order. The FCC should not mandate assignment of one NXX for each provider of exchange service since this may effectively preclude states from using overlays in many instances. For instance, if there are not sufficient NXX's for this purpose, NXXs may have be taken away from existing customers to accommodate the FCC's requirement. The FCC should allow the state discretion to implement procedures in this regard which are appropriate given the particular circumstances in the state or region facing number shortage.

III. Conclusion.

The PaPUC respectfully requests that the FCC reconsider its Second Report and Order consistent with the comments contained herein.

Respectfully submitted,

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Dated: October 7, 1996.